



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

999 18<sup>TH</sup> STREET- SUITE 300  
DENVER, CO 80202-2466  
Phone 800-227-8917  
<http://www.epa.gov/region08>

**September 20, 2006**

Ref: 8ENF-L

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Registered Agent for Flying J Oil & Gas Inc.  
Corporation Service Company  
2180 South 1300 East, Suite 650  
Salt Lake City, Utah 84106

Re: UNDERGROUND INJECTION CONTROL  
PROGRAM (UIC)  
Proposed Order and Penalty Complaint with  
Notice of Opportunity for Hearing

Dear Registered Agent:

The enclosed document is a Proposed Order and Penalty Complaint with Notice of Opportunity for Hearing ( complaint ) for violations of the Safe Drinking Water Act ( SDWA ). Please carefully read the complaint soon, since it describes Flying J Oil & Gas Inc. s (Flying J's) rights and responsibilities in this matter as well as EPA s authority, the factual basis of the violations, and the background for the proposed penalties. Also enclosed is a copy of the Rules of Practice that govern these proceedings, the required Public Notice associated with this complaint and, in case Flying J meets the criteria, an information sheet about the Small Business Regulatory Enforcement Fairness Act.

Flying J is required to take action within 30 calendar days of your receipt of this complaint to avoid the possibility of having a default judgment entered against Flying J that could impose the penalty amount proposed in the complaint.

Whether or not Flying J requests a hearing, we encourage an informal conference with EPA concerning the alleged violations in an effort to negotiate a settlement. Flying J may wish to appear at an informal conference and/or be represented by legal counsel. To arrange for such a conference, Flying J should contact Amy Swanson, Enforcement Attorney, Legal Enforcement Program, at the number provided below. Request for such a conference does not extend the 30 calendar day period during which a request for hearing must be submitted.

Public Notice of EPA s complaint and the opportunity to provide written comments on the complaint is being provided pursuant to section 1423 (c)(3)(B) of the SDWA, 42 U.S.C. §300h-2(c)(3)(B). Should a hearing be held, any person who comments on the complaint has a right to participate in the hearing.

If Flying J has technical questions relating to this matter, the person most knowledgeable on my staff is Britta Campbell Copt, UIC Enforcement Team, Technical Enforcement Program, at 1-800-227-8917 ext. 6229 or (303) 312-6229. For all legal questions, the person most knowledgeable on my staff is Amy Swanson at 1-800-227-8917 ext. 6906 or (303) 312-6906. Ms. Copt and Ms. Swanson can also be reached at the following addresses:

Britta Campbell Copt (Mail Code 8ENF-UFO)  
U.S. EPA Region 8  
999 18th Street, Suite 300  
Denver, Colorado 80202-2466, or

Amy Swanson (Mail Code 8ENF-L)  
Enforcement Attorney  
U.S. EPA Region 8  
999 18th Street, Suite 300  
Denver, Colorado 80202-2466.

We urge Flying J s prompt attention to this matter.

Sincerely,  
**SIGNED**

Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosures:

Proposed Order and Penalty Complaint  
with Notice of Opportunity for Hearing  
40 C.F.R. Part 22  
Public Notice  
U.S. EPA Small Business Resources Fact Sheet

cc: Elaine Willie, Environmental Coordinator (with all enclosures)  
Ute Indian Tribe  
P.O. Box 460  
Fort Duchesne, Utah 84026

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

Docket No. **SDWA-08-2006-0063**

In the Matter of:	)	
	)	
Flying J Oil & Gas Inc.	)	<b>PROPOSED ORDER AND PENALTY</b>
a Utah corporation,	)	<b>COMPLAINT WITH NOTICE OF</b>
Respondent.	)	<b>OPPORTUNITY FOR HEARING</b>
	)	
Proceedings under Section 1423(c)	)	
of the Safe Drinking Water Act	)	
42 U.S.C. 300h-2(c)	)	

**INTRODUCTION**

I.This civil administrative enforcement action is authorized by Congress in section 1423(c) of the Public Health Service Act, also known as the Safe Drinking Water Act (SDWA or the Act). 42 § U.S.C. 300h-2(c). The Environmental Protection Agency (EPA) regulations authorized by the Act are set out in part 144 of title 40 of the Code of Federal Regulations (40 C.F.R.), and violations of permits or EPA regulations constitute violations of the Act. The rules for this proceeding are the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits (“Rules of Practice”),” 40 C.F.R. part 22, a copy of which is enclosed.

II.The undersigned EPA official has been properly delegated the authority to issue this Proposed Order and Penalty Complaint with Notice of Opportunity for Hearing (complaint).

III.EPA alleges that Flying J Oil & Gas Inc. (Respondent) has violated the Act and proposes the assessment of a civil penalty, as more fully explained below.

**NOTICE OF OPPORTUNITY FOR A HEARING**

IV.Respondent has the right to a public hearing before an administrative law judge to disagree with any factual allegation made by EPA in the complaint or the appropriateness of the proposed penalty, or to present the grounds for any legal defense it may have.

V.To disagree with the complaint and assert your right to a hearing, Respondent must file a written answer (and one copy) with the Region 8 Hearing Clerk at the following address:

Region 8 Hearing Clerk  
999 18<sup>th</sup> Street; Suite 300 (8RC)  
Denver, Colorado 80202

within 30 calendar days of receiving this complaint. The answer must clearly admit, deny or explain the factual allegations of the complaint, the grounds for any defense, the facts you may dispute, and your specific request for a public hearing. Please see section 22.15 of the Rules of Practice for a complete description of what must be in the answer.

**FAILURE TO FILE AN ANSWER AND REQUEST FOR HEARING WITHIN 30 CALENDAR DAYS MAY WAIVE RESPONDENT'S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR PROPOSED PENALTY, AND RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT, OR UP TO THE MAXIMUM AUTHORIZED BY THE ACT.**

#### **QUICK RESOLUTION**

VI.Respondent may resolve this proceeding at any time by paying the penalty amount proposed in the complaint. Such action to make payment need not contain any response to, or admission of, the allegations in the complaint. Such action to make payment constitutes a waiver of Respondent's right to contest the allegations and to appeal the final order. See section 22.18 of the Rules of Practice for a full explanation of the quick resolution process.

#### **SETTLEMENT NEGOTIATIONS**

VII.EPA encourages discussing whether cases can be settled through informal settlement conferences. If you want to pursue the possibility of settling this matter, or have any other questions, contact Amy Swanson, Enforcement Attorney, at [1-800-227-8917; extension 6906 or 303-312-6906] or at the address identified in paragraph 19 herein. **Please note that calling Ms. Swanson or requesting a settlement conference does NOT delay the running of the 30 day period for filing an answer and requesting a hearing.**

## GENERAL ALLEGATIONS

The following general allegations apply to all times relevant to this action, and to each count of this complaint:

VIII. Pursuant to section 1422 of the Act, 42 U.S.C. § 300h-1, and 40 C.F.R. part 147 subpart TT, section 147.2253, EPA administers the Underground Injection Control (UIC) program for Class II wells in Indian country within the State of Utah. The effective date of the program is November 25, 1988. The program requirements are located at 40 C.F.R. parts 124, 144, 146, 147, and 148.

IX. Class II underground injection wells under the jurisdiction of the EPA are authorized to operate either under an EPA-issued permit or under a rule. To be eligible to operate under rule-authorization, a UIC well must be a Class II enhanced oil recovery well and must have been such a well at the time the EPA UIC program became effective. The rule-authorization requirements are found in 40 C.F.R. subpart C (sections 144.21 through 144.28). All other Class II wells must be authorized by an EPA-issued permit and are subject to the requirements set forth at 40 C.F.R. § 144.52(a)(7) and permit conditions. Enhanced oil recovery wells are wells that inject for the purpose of increasing oil and/or gas production at other nearby production wells.

X. The well subject to this action is a permitted Class II enhanced oil recovery well, UIC Permit No. UT20881-04555. The well is owned and/or operated by Respondent and is located within the exterior boundary of the Uintah & Ouray Indian Reservation. The well and its location is: the Davis 1-33A1E well, East Bluebell Field, Uintah County, Utah.

11. Regulations governing financial responsibility to adequately plug and abandon permitted Class II injection wells are found at 40 C.F.R. §144.52(a)(7). These regulations, and part III(F) of each UIC permit, require Respondent to establish and maintain acceptable financial responsibility to adequately plug and abandon its injection wells.

12. Since April 28, 2000, Respondent has elected to use financial statement coverage as an acceptable financial instrument. To be allowed to use financial statement coverage, Respondent must meet five financial ratio tests concerning certain corporate assets and debits, and must show a net worth of at least \$1,000,000.00. In its 2005 Chief Financial Officer's letter to EPA, received May 1, 2006, Respondent failed to meet all of the five financial ratio tests. This is a violation of 40 C.F.R. §144.52(a)(7) and part III(F) of Respondent's UIC permit for the period beginning January 1, 2005, until June 1, 2006, when Respondent established a Surety Bond with a Standby Trust Agreement.

13. Beginning November 26, 1990, through the present, Respondent is a corporation organized and authorized to do business in the State of Utah.

14. Respondent is a "person" within the meaning of section 1401(12) of the Act, 42 U.S.C. § 300f(12).

15. The wells penetrate underground sources of drinking water (USDWs) including, but not limited, to groundwater in, the Green River Formation from ground surface to approximately 2804 feet below surface.

16. Respondent is in violation of the regulations at 40 C.F.R. § 144.52(a)(7) and part III(F) of its UIC permit by failing to establish and maintain an acceptable mechanism for financial responsibility to plug and abandon its UIC injection well governed under the federal UIC program in Region 8 in 2005.

### **PROPOSED ORDER WITH ADMINISTRATIVE CIVIL PENALTY**

17. For violations of the Act that occurred on or after March 16, 2004, the Act, as amended, authorizes the assessment of a civil penalty of up to \$32,500.00 per day, 42 U.S.C. § 300h-2(b). The Act requires EPA to take into account the following factors in assessing a civil penalty: the nature, circumstances, extent and gravity of the violations; any economic benefit or savings gained resulting from the violations; Respondent's history of such violations; Respondent's culpability for the violations; Respondent's good-faith efforts to comply with applicable requirements; the economic impact of the penalty on the Respondent; and other factors that justice may require. 42 U.S.C. § 300h-2(c)(4)(B).

18. In light of the statutory factors and the specific facts of this case, **EPA proposes that the Respondent be ordered to pay a penalty of \$32,000.00 (thirty-two thousand dollars) for the violation alleged above, as explained below:**

#### Nature, Circumstances, Extent, and Gravity of Violations

Failing to maintain adequate financial responsibility to plug and abandon its injection well presents a potential for risk to USDWs if EPA were forced to plug the well and had no financial means to do so. Unplugged wells can serve as a conduit for fluid movement into USDWs.

#### Prior Compliance History

No adjustment made regarding this factor at this time.

#### Good-Faith Efforts to Comply

On May 26, 2006, EPA sent Respondent a Notice of Noncompliance. This letter

informed Respondent that it had not maintained adequate financial assurance, and required Respondent to establish an alternate financial assurance mechanism. On June 1, 2006, Respondent established a Surety Bond with a Standby Trust Agreement.

#### Degree of Culpability

Respondent is a large independent oil company with gross sales in 2005 in excess of \$10 billion, employing approximately 13,000 people, with operations nationwide. It should have been aware of all UIC requirements when it applied for and received EPA's UIC Permit No. UT20881-04555. Respondent called EPA on February 3, 2006, and asked what they were supposed to do if Respondent could not pass all required ratios. Respondent was told that if they did not pass all of the ratios, Respondent would have to establish another financial mechanism. Respondent notified EPA in a letter dated April 24, 2006, that Respondent could not pass all required ratios.

#### Economic Benefit

An economic benefit was experienced by Respondent from its delayed implementation of an alternative financial instrument to cover the costs of adequately plugging and abandoning its well, after it failed its financial statement coverage. The total delayed cost of compliance is estimated to be \$6,734.00.

#### Ability to Pay

EPA did not reduce the proposed penalty due to this factor, but will consider any new information Respondent may present regarding Respondent's ability to pay the penalty proposed in this complaint.

#### Other Matters that Justice may Require

No adjustments made regarding these factors at this time.

19. Respondent's payment of the penalty shall be made by money order or certified check made payable to "Treasurer, United States of America" and mailed to the following address:

EPA - Region 8  
Regional Hearing Clerk  
P.O. Box 360859  
Pittsburgh, Pennsylvania 15251.

A copy of said check shall be mailed to the following address:

Amy Swanson (8ENF-L)  
Enforcement Attorney

U.S. EPA - Region 8  
999 18th Street, Suite 300  
Denver, Colorado 80202-2466.

20. The provisions of this complaint shall apply to and be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns.

21. As required by the Act, prior to the assessment of a civil penalty, EPA will provide public notice of the proposed penalty, and reasonable opportunity for people to comment on the matter, and present evidence in the event a hearing is held. 42 U.S.C. § 300h-2(c)(3)(B).

22. The administrative law judge is not bound by EPA's penalty policy or the penalty proposed by EPA, and may assess a penalty above the proposed amount, up to \$32,500.00, per day for each violation, as authorized in the statute, as amended.

23. This complaint does not constitute a waiver, suspension, or modification of the requirements of any applicable provision of the Act or the UIC regulations implementing the Act, which remain in full force and effect. Issuance of this complaint is not an election by the EPA to forego any civil or any criminal action otherwise authorized under the Act.

Issued this 20<sup>TH</sup> day of September, 2006.

COMPLAINANT,

**SIGNED**

\_\_\_\_\_  
Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance,  
and Environmental Justice

**IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE REGIONAL HEARING CLERK.**

**THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE ON SEPTEMBER 20, 2006.**